IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Dr.Deen Dayal Vs. Smt. Indore Devi & another

S.B.CIVIL MISC. APPEAL NO.138/1991

Against the order dated 25.1.1991 passed by Shri P.C.Parmar, Workmen's Compensation Commissioner, Sri Gangangar in WC Case No.20/1987 (Smt. Indore Devi Vs. Dr.Deen Dayal).

Date of Judgment : 10th January, 2005

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Vijay Agarwal for the appellant

Mr.D.R.Lunkar, for the respondent No.2

BY THE COURT:

This appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as `the Act') has been submitted by the non-applicant - employer against the order dated 25.1.1991 passed by the Workmen's Compensation Commissioner, Sri Ganganagar in Case No.20/87 whereby the learned Commissioner awarded a compensation of Rs.52,432/- on account of personal injury resulting in death of workman (driver) Rajuram while on duty on truck bearing registration No.RRC 828 owned by the appellant. The learned Commissioner also ordered payment of Rs.26,216/- by way of penalty and Rs.3,000/- as interest under Sec.4A of the Act. The learned

Commissioner while making apportionment of the liability, directed the amount of compensation of Rs.52,432/- to be borne by the employer (appellant) and insurer (respondent No.2). However, the learned Commissioner directed the appellant alone to bear the amount of Rs.26,216/- of penalty and Rs.3000/- of interest.

Brief facts relevant for the present appeal are that Smt.Harkauri Devi and Smt.Indori Devi submitted the claim application before the Workmen's Compensation Commissioner, Sri Ganganagar claiming an amount of Rs.1,31,082/- against the appellant on account of death of Rajuram, son of claimant No.1 and husband of claimant No.2 who died having entangled in between two trucks, while being employed at Truck bearing No.RRC 828 belonging to the appellant. Monthly wages of the deceased were stated to be Rs.1500/-. The appellant submitted before the Commissioner that the truck in question was insured with the Oriental Insurance Company Ltd., Sri Ganganagar and the entire claim was the liability of the Insurance Company, and therefore, requested for impleadment of the Insurance Company. Respondent No.2 Insurer was also accordingly issued notices of the claim application. Respondent No.2 Insurer submitted reply denying the facts for want of knowledge and stated that they were never given any notice of this accident and were not liable towards any compensation. It was also stated that the owner of the vehicle was a person possessed of sufficient means and unless he was declared insolvent, there was no liability of the Insurance Company. The appellant in his separate reply admitted the death of Rajuram on 26.2.1987 in accident but denied the deceased being in his employment and denied his death in accident while on duty. The appellant also denied any previous notice of the claim to him. However, it was also stated that if any claim was admissible, then as the vehicle was insured with the Oriental Insurance Company Ltd., the said Company alone was liable for payment of the amount

of claim. Both the non-applicants raised the objection of want of particulars about the relationship of the applicants with the deceased.

In view of the objections raised by the respondents about the nature of employment and relationship of the claimants with deceased, clarification was submitted by the claimants on 18.7.1989 pointing out that deceased Rajuram was driver on truck No.RCC 828 and that applicant Smt.Hakauri was the mother of Rajuram and Smt.Indori was the wife of Rajuram and both were dependent upon him. The applicants examined Smt.Harkauri and Prathvi Raj in oral evidence who deposed in support of the claim averments. Smt.Harkauri was put a suggestion in the cross-examination on behalf of the appellant that the wages of deceased Rajuram were Rs.450/- per month only which she denied. Prathvi Raj PW-2 has pointed out that he was Khalasi with deceased Rajuram on the truck and deposed about the occurrence. He has also been put the same question in the cross-examination about the wages of the deceased to be Rs.450/- per month which he denied. However, the appellant Dr.Deendayal himself deposed as DW-1 in the case and admitted in his examination-in-chief that he was the owner of truck No.RRC 828, deceased Raju was driver on the truck and stated that his salary was Rs.600/- per month. He has also stated that he informed the Insurance Company of the claim and produced the Cover Note, Ex.D/1. In his cross-examination, he also admitted that at the time of accident, driver was on duty.

The learned Commissioner proceeded to decide the questions involved in the case in the manner that monthly wages were accepted to Rs.600/-, the age of deceased as 24 years and he having died while on duty, and therefore, found the non-applicants liable towards compensation which was quantified to Rs.52,432/-. While considering the other

relief, the learned Commissioner found that the compensation was required to be deposited within 30 days from the date of the accident for disbursement to the dependents of the deceased. The learned Commissioner found that even after four years of the accident, dependents stood deprived of the amount of compensation, and therefore, directed the appellant to pay further amount of 50% of the compensation as penalty and 6% interest. The amount of penalty was quantified at Rs.26,216/- and of interest at Rs.3000/-. The employer-non-applicant has come up in appeal against the award so passed by the learned Commissioner.

Although various grounds were urged in the memo of appeal submitted before this Court, learned counsel for the appellant fairly restricted his submissions in respect of the award of penalty and interest only. Learned counsel submitted that Workmen's Compensation Commissioner erred in awarding penalty against the appellant as the appellant has already informed the Insurance Company of the accident and the fault lay upon the insurer in not making timely payment. Learned counsel also submitted that in any case, the amount of 50% of compensation is provided as the maximum amount of penalty and the Commissioner erred in awarding maximum penalty without considering the mitigating circumstances. Learned counsel also submitted that amount of interest could not have been imposed upon the appellant alone and the insurer ought to have been made equally liable.

Learned counsel for the respondent No.2 insurer submitted that in view of the law explained and settled by the Hon'ble Apex Court in the case of Ved Prakash Garg Vs. Premi Devi and others (1998 ACJ 1), the question is no more res integra that the amount of penalty under Section 4-A of the Act is the liability of the employer alone and the

learned Commissioner has not erred in directing this amount to be borne by the appellant. Learned counsel also submitted that in the circumstances of the case, the amount of interest has also been rightly ordered to be borne by the appellant.

In view of the decision of the Hon'ble Apex Court in Ved Prakash Garg's case (supra), learned counsel for the appellant fairly submitted that the issue stands concluded by the said decision but however, learned counsel contended that the maximum of penalty ought not to have been awarded in the present case and secondly that in view of the said decision of the Hon'ble Supreme Court, the amount of interest ought to be borne by the insurer.

In view of rival contentions of parties, the substantial questions of law requiring determination in this appeal are:-

(A) Whether the learned Commissioner erred in directing payment of maximum amount of penalty under Sec.4A of the Act?

(B) Whether the learned Commissioner erred in directing the amount of interest to be borne by the appellant employer alone?

Having considered the rival submissions, record of the case and the law applicable thereto, this Court is clearly of the opinion that so far the amount of penalty under Sec.4-A of the Act is concerned, the learned Commissioner has proceeded squarely in conformity with law as the said liability is of the employer alone and the Insurance Company is not liable to reimburse this amount to the insured as concluded by the decision of the Hon'ble Apex Court in Ved Prakash Garg's case (supra) wherein the Hon'ble Apex Court held,-

> "As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of section 3 and section 4-A sub-section (3) (a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

So far the quantification of the amount of penalty is concerned, this Court is clearly of the opinion that learned Commissioner has not committed any error in awarding 50% of the amount of compensation as penalty. A look at the conduct and stand of the appellant makes it apparent that the appellant never attempted to discharge his obligation towards dependents, the mother and widow of his young employee of 24 years of age. In the first place, the factum of accident itself was sought to be denied, then the employment of deceased was also sought to be denied. In the first application submitted before the Workmen's Compensation Commissioner by the appellant on 4.12.1987, there is not even a whisper of any information having been sent to the Insurance Company or it having been asked to make payment. Then in the reply, the factum of deceased being in employment with him and dying during the course of employment were denied which resulted in long drawn trial of a just claim for compensation which could be finally decided only on 25.1.1991, although the employee died as back as on 26.2.1987. Even a look at the stand of the appellant-employer and the insurer before the Commissioner makes it further clear that the attempt on the part of the appellant to shift the burden on the insurer is also hollow and baseless inasmuch as no

such specific stand has been taken in the reply by the employer and on the contrary, he has contended that the claimants have not notified any claim earlier. The insurer has also categorically stated that they were not given any notice of the accident. Bald statement in the evidence of the appellant of informing the Insurance Company of the claim is not supported or corroborated by any material on record and on the contrary, the same stands contradicted by the very stand of the appellant and the insurer.

Learned counsel for the appellant attempted to support his contention by reference to a decision of the Bombay High Court in Arjitsing Fakirsing Potiwala Vs. Omega Engineering Corporation (1985 ACJ 115). However, in the said case, the High Court was concerned with a matter where Workmen's Compensation Commissioner although calculated the amount of compensation to Rs.1646.40 but disallowed the workman's application on the ground that in view of Section 38-A of the Shops and Establishments Act, 1948, the provisions of the Workmen's Compensation Act were not applicable to the establishment in question. It was found by the Court that there was nothing in the provisions of two enactments to debar the applicant workman from claiming compensation under the Workmen's Compensation Act, and therefore, allowed the appeal by the workman. However, on the question of penalty, it was contended on behalf of the employer that workman initially claimed that he was in the salary group of Rs.300-400/- and sustained 30% loss in earning capacity but the Commissioner has recorded the finding of loss of earning capacity as 7% only and the workman falling in the wage group of Rs.150-200/, hence no compensation be paid to him.. The Court rejected this argument of the employer and found the employee to be entitled to the amount of penalty. The Court while rejecting the argument of the employer held thus:-

> "This argument does not appeal to me since section 4-A does not prevent awarding penalty because the workman claims to be in a wrong wage group or because he claims more loss of his earning capacity than he actually sustained. Section 4-A only states that where an employer does not make even provisional payment based on the extent of liability which he accepts, the workman would be entitled to penalty and interest as stated therein. In the present case the opposite party had raised frivolous defences by even claiming that the workman was not employed with it and that the *Workmen's Compensation Act* was itself not applicable to the employee."

The learned counsel for the appellant referred to the fact that in the said case of Arjitsing Fakirsingh Potiwala (supra) on the amount of compensation of Rs.1646.40, the penalty was awarded of Rs.500/- only, and therefore 50% penalty ought not be awarded in the present case also. Such far-stretched argument of the learned counsel cannot be accepted for the simple reason that the quantification of penalty depends upon facts and circumstances of each case. The case of Arjitsing Fakirsing Poitwala (supra) was ultimately a case of loss of 7% of the earning capacity of the workman and present one is a case of death resulting from the accident arising out of and during the course of employment. The widow and mother of deceased stood deprived of compensation for about four years and the employer has not taken care to provide for even the bare minimum subsistence to the family of his employee at the time of distress. Moreover,the appellant-employer has chosen to raise frivolous defences as noticed hereinbefore. The approach and conduct of the employer falls short of basic humanitarian approach, apart from being totally in defiance of the legal liabilities. The penalty has rightly been awarded at the rate of 50% of the compensation.

So far the amount of interest is concerned, the learned Commissioner has awarded an amount of Rs.3000/- towards interest but applying the principles of law laid down and explained by the Hon'ble Apex Court in Ved Prakash Garg's case (supra) and further in Kashibhai Rambhai Patel Vs. Shahabhai Somabhai Parmar and others (JT 2000 (3) SC 373), it is apparent that the liability in respect of interest could be burdened on the Insurance Company and the same is the liability of the appellant and respondent No.2 insurer. To the extent of amount of interest, insurer – respondent No.2 remains liable and to that extent the award deserves to be modified.

In view of the aforesaid, the answer to the Question No.(A) is in the negative and it is held that the learned Commissioner has rightly awarded and quantified the amount of penalty. However, answer to the Question No.(B) is in the affirmative i.e. in favour of the appellant and it is held that learned Commissioner has erred in directing the amount of interest to be borne by the appellant alone. The insurer, respondent No.2 remains liable to the extent of the amount of interest also, apart from the principal amount of compensation.

As a result of the aforesaid, this appeal is partly allowed, while the impugned order dated 25.1.1991 is maintained, the same is modified only to the extent that the Insurance Company, respondent No.2 is liable to meet the claim for compensation alongwith interest as imposed on the insured employer and accordingly the respondent No.2 insurer would reimburse this interest amount of Rs.3000/- to the appellant. No costs.

(DINESH MAHESHWARI),J.

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